

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF LABOR AND INDUSTRY

In the Matter of Handyman Express,
Inc., License No. 5876

FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION

The above-matter came on for a hearing before Administrative Law Judge Kathleen D. Sheehy on April 13, 2006, at 1:30 p.m. at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota. The hearing record closed on April 13, 2006, upon conclusion of the hearing.

Christopher M. Kaisershot, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared for the Department of Labor and Industry (the Department).

Howard Smith, President, 9100 West Bloomington Freeway, Bloomington, MN 55431 appeared for Handyman Express, Inc. (Respondent).

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommended Decision. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Nancy Leppink, Deputy Commissioner, Minnesota Department of Labor and Industry, 443 Lafayette Road North, St. Paul, MN 55155 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

STATEMENT OF ISSUES

1. Did Respondent, as a residential building contractor, fail to reasonably supervise the activity of two subcontractors in violation of Minn. Stat. § 326.91, subd. 1(4)?

2. Did Respondent fail to complete two projects, thereby demonstrating that it has engaged in incompetent, untrustworthy, and financially irresponsible practices in violation of Minn. Stat. § 326.91, subd. 1(6)?

3. Did the Respondent fail to list its residential building contractor license number in a newspaper advertisement or flyer, in violation of Minn. Stat. §§ 326.91, subd. 1(5) and 326.95, subd. 2?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Handyman Express is a small building contractor (license no. 5876) located in Bloomington, Minnesota.^[1] Howard Smith is the President of Handyman Express.^[2]

2. Handyman Express advertises its home repair services in suburban newspapers and flyers. One of its advertisements reads “We do it all . . . No job too small.” It offers services including carpentry, roofing, siding, installation of new windows and doors, electrical and plumbing work, bathroom remodeling, cement work, painting, flooring, gutters, tile, and kitchen updating.^[3]

3. Handyman Express has no employees other than Smith and a receptionist, who takes incoming telephone calls and prepares a job order invoice (described as a “lead”), which is then forwarded to various subcontractors. The job order invoices sent to subcontractors bear the advisory “C.O.D. All checks made payable to Handyman Express.”^[4] The subcontractors then contact the customer, provide a price for the work, and perform the work.^[5] The agreement is memorialized on a contract form that identifies Handyman Express as the licensed general contractor, and the subcontractor signs the contract on behalf of Handyman Express.^[6] Handyman Express typically retains 20% of the contract price, and forwards the remainder to the subcontractor.^[7]

4. Handyman Express only provides training to subcontractors on how to bid a job. In all other respects, Handyman relies on the knowledge, skills, and abilities of its

subcontractors. The subcontractors collect the funds from clients, purchase any necessary materials, and perform all of the work. Except for the initial contact, most of the contacts between clients and Handyman Express take place through the subcontractors.^[8]

5. From May 1992 through the fall of 2005, the Department received approximately 25 complaints about Handyman Express.^[9]

6. In 1996, the Department issued a warning letter to Handyman Express for failing to satisfy a judgment rendered against it.^[10]

7. In 2003, the Department issued a warning to Handyman Express for failure to respond to Department requests for information, demonstrated incompetence, failure to secure a written contract for all work to be performed, and commencing work prior to securing a building permit.^[11]

8. In 2004, Handyman Express entered into a Consent Order, was censured, and paid a civil penalty of \$250 based on allegations that it had failed to reasonably supervise employees, agents, subcontractors, or salespersons, or had performed negligently or in breach of contract; had failed to secure a written contract; and had failed to secure required building permits or inspections.^[12]

The Hansen Complaint

9. In June 2005, Barbara Hansen, 401 E. Burnsville Pkwy, Burnsville, Minnesota, contacted Handyman Express after seeing two of its advertisements. Ms. Hansen sought to have five bi-fold doors re-hung and have new side casings installed. Shortly thereafter, Chris Cline, the owner of Mystical Builders, came to Ms. Hansen's apartment and provided an estimate of \$902.50 for the work (materials and labor). The proposal listed contact information for both Cline and Handyman Express.^[13]

10. On June 13, 2005, Ms. Hansen signed a written contract for the repair. The printed form was identified as being from Handyman Express and provided the street address and telephone information for the business. The form included the building contractor license number of Handyman Express, No. 5876. Cline signed the contract on behalf of Handyman Express.^[14] Ms. Hansen paid Cline \$439.38 at that time, with a check made payable to Handyman Express.^[15]

11. After the contract was signed, and Cline began work, he told Hansen that the old doors could not be repaired and re-hung, but that he needed to purchase new doors. Cline charged Ms. Hansen another \$225.00 for materials, and he had Ms. Hansen make out the check payable to Mystical Builders. After Cline installed the new doors, the doors would only open about a foot, making the closets unusable.^[16] Hansen paid the remaining balance of the original contract, \$463.13 by check to Handyman Express, on June 16, 2005.^[17]

12. After Hansen complained to Smith about Cline's work in August 2005, Smith came to Ms. Hansen's apartment to inspect the work. He told Ms. Hansen that he was "firing" Cline. He offered to change the handles and repaint the doors.^[18]

13. On September 13, 2005, Ms. Hansen filed a written complaint with the Department seeking to have the work corrected. She included a copy of the advertisement that she originally relied upon to contact Handyman Express. That advertisement lacks any listing of the residential building contractor license number.^[19]

14. On September 19, 2005, the Department wrote to Handyman Express, providing notice of the complaint and seeking a copy of the contract, change order, name and contact information for the person who had supervised the project, and description of how the matter would be resolved.^[20] Smith responded by letter (received October 7, 2005), saying that Chris Cline had installed new doors; that Ms. Hansen was not happy that they were not painted; and that he had offered to have them painted, but she refused his offer. He also indicated that Handyman Express had "stopped doing business with" Cline because Cline had his own company "and felt that he has gone as far as he could" with Ms. Hansen.^[21]

15. On October 13, 2005, the Department sent another letter again seeking the contract and change order and the name and contact information for the person who supervised Cline's work.^[22] On October 25, 2005, Smith submitted the Hansen contract and the workers' compensation insurance application for Mystical Builders (identifying Cline as the Vice President). He stated that Cline had "worked on and managed the job" and again said that he (Smith) had offered to send a painter, but Ms. Hansen said she did not want any more work done.^[23]

16. On November 16, 2005, Smith wrote to Ms. Hansen offering to bring a painter to her home to finish the work. The letter notes that Ms. Hansen still had her old doors and that Handyman Express "will try to reuse those [doors] at your request."^[24]

17. After the complaint was filed with the Department, another subcontractor (identified by Smith as a carpenter) came to re-hang Ms. Hansen's original doors. The work performed was not adequate, and Ms. Hansen complained again to Smith. A third subcontractor successfully re-hung the doors in February 2006.^[25]

18. Handyman Express did not offer to refund the additional money spent on supplies.^[26] At the hearing, Smith indicated that the closet "doors" Cline had installed were made of shelving material. Smith apologized to Ms. Hansen for the delay in completing the work.^[27]

The Byers Complaint

19. Janet Byers, 6344 Upton Avenue South, Richfield, Minnesota, saved a Handyman Express flier delivered with the *Richfield Sun*. In June 2005, she called Handyman Express to replace some kitchen cabinetry. After a period of missed contacts and lack of response by Handyman Express, Byers contacted a different contractor for that work.^[28]

20. Ms. Byers called Handyman Express again in mid-July 2005 about additional work. After a few calls back and forth, over several days, Handyman Express sent Craig Carter to the home.^[29]

21. Carter appeared at Ms. Byers' residence and identified himself as working for Handyman Express. Carter was accompanied by his son at the time. While there, Carter was on his cell phone with another customer, identified as a customer of Handyman Express, regarding a project deadline.^[30]

22. Carter made three visits to the Byers residence to clarify the scope of the project. Ms. Byers wanted a new porch floor, kitchen floor, three doors, a porch door, a new bathroom (including a tub with surround), and a window converted to a pass-through. On September 2, 2005, Carter gave Ms. Byers an estimate of \$5,325 for the project.^[31]

23. Carter told Ms. Byers that his "paychecks" from Handyman Express had been bouncing. Carter told Ms. Byers to make the check payable to Carter Construction and that he would provide Handyman Express its 20% share of the contract price. Ms. Byers wrote out a check for \$5,325, payable to Carter Construction.^[32] There is no written contract to document this agreement.^[33]

24. Ms. Byers accompanied Carter to pick out kitchen and porch flooring. Half of the flooring material was delivered.^[34]

25. Ms. Byers began calling Carter regarding the status of the work. Carter did not answer his telephone or return her calls. After a period of time, she placed Carter's miter saw, which he had left on the premises, in the house and locked the door. While she was gone, Carter entered the premises and removed the saw. Ms. Byers called the Richfield police and reported that action as a break-in. Carter never appeared at the Byers residence again. He did not complete the project or return the funds to Ms. Byers.^[35]

26. Ms. Byers called Handyman Express to complain and spoke to the receptionist. The receptionist told Ms. Byers that Carter had been "let go" in mid-August, and that Handyman Express had called clients to tell them that he no longer worked there. When Ms. Byers noted that she had dealt with Carter in September, the receptionist said that Ms. Byers "must have been missed."^[36]

27. On one occasion, Ms. Byers spoke to Howard Smith. Smith told Ms. Byers that she had "subverted" Handyman Express by making the check out directly to Carter. He also indicated to Ms. Byers that her only recourse was to contact the police and consumer protection agencies.^[37]

28. In October 2005, Ms. Byers filed a written complaint with the Department. She included a copy of the advertisement that she originally relied upon to contact Handyman Express and a copy of the check that she had written to Carter Construction. The advertisement does not list the license number of Handyman Express.^[38]

29. On October 25, 2005, the Department wrote to Handyman Express, providing notice of the complaint and seeking copies of the contract, the name of the person who supervised Carter, and a copy of the check refunding \$5,325 to Ms. Byers.^[39] Smith responded by letter (received November 3, 2005), stating that Carter had been a subcontractor who began work for Handyman Express on August 1, 2005, as a subcontractor. Smith claimed that Carter told Byers that Carter was no longer working for Handyman Express but would be glad to do the job through his company, Carter Construction. Smith included Carter's resume and the "subcontractor application" form completed by Carter. There is a space on the form labeled "Contractors License No.," which Carter left blank.^[40]

30. Ms. Byers hired a different contractor and purchased additional materials to complete the work on her home. She did not receive a refund of any part of the payment for the job from Handyman Express.^[41]

31. The Department investigation concluded that Carter was not licensed as a residential building contractor. The Department issued a cease and desist order to Carter directing him to stop engaging in work requiring such a license.^[42]

32. Smith wrote to the Department, in a letter received November 28, 2005, regarding the Byers' complaint. Smith indicated in that letter that he did not know whether Carter was licensed to perform remodeling work.^[43]

33. In the week before the contested case hearing, the Department performed a background check on Carter, which disclosed that Carter had a significant criminal history and that he was on probation for making terroristic threats throughout the time that Carter was associated with Handyman Express.^[44]

34. The Department investigation concluded that because Handyman Express sent Carter to Ms. Byers as a subcontractor, Handyman Express was responsible for supervising Carter and ensuring the project was completed.^[45]

Procedural Findings

35. On January 11, 2006, the Commissioner issued a Notice and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges, which was served on Handyman Express by U.S. mail on January 12, 2006.

36. A prehearing conference took place on February 15, 2006. At that time the hearing was scheduled to take place on March 22, 2006.^[46]

37. At the request of both parties, the hearing was continued to April 13, 2006.

38. Respondent conceded during the hearing that it had violated Minn. Stat. §§ 326.91, subd. 1(5) and 326.95, subd. 2, by failing to include its license number in advertising.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Labor and Industry and the Administrative Law Judge have jurisdiction in this matter under Minn. Stat. §§ 14.50, 45.027, and 326.91.
2. The Respondent was given timely and proper notice of the hearing in this matter.
3. The Department has complied with all procedural requirements of law.
4. The Department must prove by a preponderance of the evidence that the alleged violations occurred.^[47]
5. The Commissioner may take action against a residential building contractor's license if the Commissioner finds that the order is in the public interest and the licensee has violated or failed to comply with any provision of Minn. Stat. §§ 326.83 to 326.98.^[48]
6. Residential building contractors must provide reasonable supervision for employees, agents, subcontractors, or salespersons.^[49]
7. The Respondent, as a residential building contractor, failed to reasonably supervise the activity of its subcontractor/agent on the Hansen and Byers projects, in violation of Minn. Stat. § 326.91, subd. 1(4).
8. Minn. Stat. § 326.91, subd. 1(6), prohibits residential building contractors from engaging in incompetent, untrustworthy, and financially irresponsible practices.
9. Respondent's practice of "renting" his license to subcontractors for a 20% fee, providing no supervision of their contacts with clients, permitting them to contract in the name of Handyman Express and to take possession of client funds for Handyman Express, then disclaiming responsibility for their defective work or fraudulent transactions, demonstrates that Respondent is incompetent, untrustworthy, and financially irresponsible within the meaning of the statute.
10. Minn. Stat. §§ 326.91, subd. 1(5), and 326.95, subd. 2, require that a residential building contractor's license number must appear in any advertising by the licensee, including signs, vehicles, business cards, published display ads, flyers, and brochures.
11. The Respondent failed to ensure that his license number appeared in advertisements, in violation of Minn. Stat. §§ 326.91, subd. 1(5), and 326.95, subd. 2.

12. An Order imposing discipline against the Respondent's license would be in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the Commissioner take disciplinary action against the residential contractor license of Handyman Express, Inc., License No. 5876.

Dated this 15th day of May, 2006.

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Tape-Recorded (two tapes);
No Transcript Prepared.

MEMORANDUM

Handyman Express maintains it did not fail to supervise the actions of the two persons it sent to work on the Hansen and Byers projects. With regard to the Hansen project, Howard Smith maintains he did come to Hansen's home after she complained and ultimately did ensure that the project was completed. The record reflects, however, that the Respondent failed to supervise the work in any way at the time it was performed. He essentially rented his license to Chris Cline for a 20% fee, and left it up to Cline to perform and manage the contract.^[50] Smith would never have even seen the work, which was performed under his license, had Hansen not complained to him about its quality. This is not "reasonable supervision" within the meaning of the statute.

With regard to the Byers project, the Respondent maintains it is not responsible for supervising the contractor it sent there, because Byers contracted with Chris Carter directly. Whether or not Byers contracted with Handyman Express or Chris Carter is not the issue; residential building contractors must provide reasonable supervision for "employees, agents, subcontractors, or salespersons."^[51] The Respondent used Carter as both an agent and a salesperson for Handyman Express. He is accordingly responsible for supervising him to ensure that his actions are authorized by Handyman Express, and if Carter misrepresents his authority, Handyman Express remains responsible for those misrepresentations.^[52]

The Respondent makes similar arguments with regard to Count II, which alleges that Respondent engaged in practices that demonstrate the Respondent is incompetent, untrustworthy, or financially irresponsible. Respondent argues that the Hansen project was completed to her satisfaction; however, it took eight months and the intervention of the Department to produce that result. Furthermore, the Respondent took no responsibility for refunding to Hansen the extra \$225 paid to Cline for new doors, which ultimately were not used because they were shelving material as opposed to doors. Respondent's conduct in connection with this project certainly demonstrates that he cannot be trusted to stand behind the work for which he is paid.

The Respondent again maintains that Carter's actions do not demonstrate incompetence, untrustworthiness, or financial irresponsibility on its part because Byers contracted directly with Carter and excluded Handyman Express from the transaction. As noted above, the Respondent is not responsible to Byers solely as a party (or nonparty) to the contract. The Respondent sent Carter to the Byers home as an agent of Handyman Express. The record makes clear that Respondent provided no supervision of Carter's contacts with Byers, but that he routinely permitted his agents to contract in the name of Handyman Express and to take possession of client funds for Handyman Express. It is irresponsible to conduct business in this manner, then to disclaim responsibility for any issues arising out of defective work or fraudulent transactions because Handyman Express is not a "party" to the contract. The record demonstrates that Respondent has engaged in practices that are incompetent, untrustworthy, and financially irresponsible within the meaning of the statute.

At the hearing, Smith maintained that the rule to govern cases such as Byers' should be "buyer beware." The purpose of the licensing and enforcement authority of the Department is to ensure that persons holding themselves out as licensed residential building contractors are providing responsible and reliable service. Discipline is warranted in this matter.

K.D.S.

^[1] Ex. 4.
^[2] Testimony of Howard Smith.
^[3] Ex. 5 at page 4.
^[4] Ex. 19.
^[5] Testimony of Howard Smith.
^[6] See, e.g., Ex. 5 at page 8.
^[7] Testimony of Howard Smith.
^[8] *Id.*
^[9] Ex. 1; Testimony of Chris Williams.
^[10] Ex. 2.
^[11] Ex. 3.

- [\[12\]](#) Ex. 4; Testimony of Chris Williams.
- [\[13\]](#) Ex. 5, page 7.
- [\[14\]](#) Ex. 5.
- [\[15\]](#) *Id.*
- [\[16\]](#) Testimony of Barbara Hansen.
- [\[17\]](#) Ex. 5.
- [\[18\]](#) *Id.*
- [\[19\]](#) Ex. 5.
- [\[20\]](#) Ex. 6.
- [\[21\]](#) Ex. 7.
- [\[22\]](#) Ex. 8.
- [\[23\]](#) Ex. 9.
- [\[24\]](#) Ex. 10.
- [\[25\]](#) Testimony of Barbara Hansen.
- [\[26\]](#) *Id.*
- [\[27\]](#) Testimony of Howard Smith.
- [\[28\]](#) Testimony of Judy Byers.
- [\[29\]](#) Ex. 19; Testimony of Howard Smith.
- [\[30\]](#) Testimony of Judy Byers.
- [\[31\]](#) *Id.* There is no written estimate.
- [\[32\]](#) Ex. 11.
- [\[33\]](#) Testimony of Judy Byers.
- [\[34\]](#) *Id.*
- [\[35\]](#) *Id.*.
- [\[36\]](#) *Id.*
- [\[37\]](#) Testimony of Howard Smith.
- [\[38\]](#) Ex. 11.
- [\[39\]](#) Ex. 12.
- [\[40\]](#) Ex. 13.
- [\[41\]](#) Testimony of Byers.
- [\[42\]](#) Testimony of Williams.
- [\[43\]](#) Ex. 15.
- [\[44\]](#) Exs. 16, 17 and 18; Testimony of Williams.
- [\[45\]](#) Testimony of Williams.
- [\[46\]](#) First Prehearing Order dated February 15, 2006.
- [\[47\]](#) Minn. R. pt. 1400.7300, subp. 5.
- [\[48\]](#) Minn. Stat. § 326.91, subd. 1(5).
- [\[49\]](#) Minn. Stat. § 326.91, subd. 1(4).
- [\[50\]](#) See, e.g., Ex. 9 at page 2; Testimony of Howard Smith.
- [\[51\]](#) Minn. Stat. § 326.91, subd. 1(4).
- [\[52\]](#) *Hagedorn v. Aid Ass'n for Lutherans*, 297 Minn. 253, 257-58, 211 N.W.2d 154, 158 (1973).